



**Testimony Submitted by
John Vaughn, Executive Vice President
Association of American Universities
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Committee on the Judiciary
Subcommittee on Courts, the Internet and Intellectual Property
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Mr. Chairman and Members of the Subcommittee, I appreciate this opportunity to discuss the work of the higher education community to address the problem of illegal peer-to-peer (P2P) file sharing on college and university campuses. Higher education institutions and the national associations to which they belong take this continuing problem very seriously. Illegal behavior of any sort is not acceptable, and that includes illegal P2P file sharing. Beyond taking actions to prevent or punish illegal activity, higher education institutions have an obligation to educate students about legal and ethical behavior as part of preparing them to be good citizens. Moreover, as both producers and consumers of intellectual property, higher education has a direct interest in promoting respect for intellectual property and copyright law .

Accordingly, when the higher education community was approached five years ago by the Recording Industry Association of America (RIAA) and the Motion Picture Association of America (MPAA) about their concerns with campus P2P file sharing, we were eager to work with them. Our mutual interest in addressing this concern led to the formation of the Joint Committee of the Higher Education and Entertainment Communities, and to the continuation and extension of the efforts that many colleges and universities already had begun to address these issues. Over the ensuing years, we have carried out a number of activities under the aegis of the Joint Committee designed to reduce or eliminate illegal P2P file sharing on college and university campuses. I have attached a list of actions taken by higher education since the formation of the Joint Committee; I will highlight here a few of those projects:

- White paper: in 2003, distributed a white paper on the legal aspects of campus P2P file sharing, which was updated and re-distributed last year,
- Network management technologies: distributed a report on technologies that may assist in reducing unauthorized file sharing,
- Legitimate online digital delivery services: identified and reported on newly formed legitimate online digital delivery services, and launched pilot project to bring together legitimate services and universities,
- University best practices: distributed a paper documenting university policies and practices for addressing unauthorized file sharing, based on a survey of major universities,
- Student education: cooperated with RIAA to review and distribute a video developed by RIAA for use in college freshman orientation sessions,
- Technology evaluation: organized a meeting of university officials, entertainment industry representatives, and network technology vendors to discuss and evaluate current technologies that might be used to block or filter illegal P2P file sharing.

This meeting to evaluate network technologies, held last October, identified a number of limitations to those products, which were acknowledged by both university and entertainment industry participants and pointed to the value of universities working with technology vendors to develop technology applications adapted for higher education institutions rather than trying to force-fit products developed for other purposes. Therefore, we have established a new University Task Force on Requirements for Filtering Networks, which will work with entertainment industry officials and technology vendors to evaluate existing technologies and promote the development of new applications to improve campus control of network operations, particularly the unauthorized distribution of copyrighted content. This group is expected to have a report later this spring, and we hope that its findings will lead to cost-effective technological solutions universities can use to block or filter unlawful content traveling over their networks.

Over the course of the five years since the formation of the Joint Committee, there have been numerous communications with campuses about the problem of illegal P2P file sharing and actions that can be taken to address it. These communications have taken the form of letters to campuses, presentations at meetings of national higher education organizations, and informal sharing of practices by colleagues across institutions.

In addition to actions taken within the higher education community, I should mention the impact of RIAA's lawsuits. Since September 2003, the recording industry has filed more than 1,000 lawsuits against students at over 130 universities and colleges. University administrators recognize the right and responsibility of copyright owners to defend their content against infringement by lawsuits, when necessary; they also recognize that one effect of these lawsuits is to send a clear message to students that they are not operating within a protected bubble on campus, that illegal P2P file sharing constitutes copyright infringement, and that they are liable for such activity.

Last week, RIAA announced a new round of lawsuits, which includes 400 students and 13 higher education institutions. This campaign also will provide a "pre-notice plan" that allows alleged infringers to settle claims before a formal lawsuit is filed. A letter to colleges and universities from RIAA President Cary Sherman was transmitted broadly across the higher education community in a transmittal from David Ward, President of the American Council on Education.

What has been the impact of this set of activities? It is clear that a great deal of progress has been made. I think it is safe to say that five years ago, few university administrators were aware of P2P file sharing technologies, the use of these technologies by students and the illegality of much of that use, and the implications of P2P file sharing for university networks. Although virtually all colleges and universities have long-standing campus policies governing the appropriate use of copyrighted works, many of these institutions had not updated and adapted those policies to the digital revolution generally and to P2P file sharing specifically.

All that has changed. The 2006 Campus Computing Survey indicates that over 80 percent of colleges and universities have institutional policies that specifically address P2P file sharing. A 2005 EDUCAUSE survey indicated that 73 percent of institutions surveyed shape network bandwidth by type of traffic to limit possible illegal P2P activity. Although more effective in identifying large movie files than smaller music files, this technology nonetheless was identified at last October's technology meeting as the most feasible current approach for addressing P2P file sharing.

The EDUCAUSE survey also indicated that the number of universities engaging legitimate online digital delivery services had nearly doubled over the course of one year. Although the absolute number of institutions using these services remains small, this one-year growth is a very encouraging trend for a business venture that is itself only a few years old; the figures presented here were reported as of February 2006, only 15 months after the first such campus-based system was announced. Moreover, the engagement of legitimate digital delivery services is greater among larger institutions: 20 percent of research universities offer a legal digital delivery service, and more than half are in the process of engaging a service or actively considering doing so. Just last week, Ruckus Networks announced a 33 percent growth in subscribers to its college-only multimedia service in the six weeks since its announcement January 22 that its multimedia digital delivery service would be available free to any college student with a valid "edu." email account. The free delivery service, made possible by an advertising-supported business model, has drawn students from more than 700 colleges and universities to the Ruckus program.

Given the considerable efforts from both the higher education and entertainment communities, why does illegal P2P file sharing persist as a problem? What barriers exist to greater progress in reducing or eliminating this activity? First, I should note that this is a ubiquitous problem, not one unique to higher education. Students increasingly come to college with P2P file sharing experiences already well ingrained. Moreover, P2P file sharing is wide-spread on the commercial networks serving a great many more customers than the roughly 17 million colleges students served by higher education. This is not to excuse higher education but simply to point out that illegal file sharing is a wide-spread problem that no sector has been able to eliminate. But I also know of no sector that has put more time, money, and effort into combating illegal file sharing than has higher education.

Yet cost can be a limiting factor in addressing P2P file sharing. At last October's technology meeting, the chief information officer of a major research university estimated that the cost to implement one proposed filtering technology would be over \$1 million initially, with annual licensing fees of approximately \$250,000. Such costs represent a serious financial challenge for colleges and universities, particularly at a time when we are trying to address the issue of rising costs of attendance for students.

In addition, university policies governing academic freedom and student privacy come into play as necessarily limiting factors. It is essential for colleges and universities to maintain an open, unfettered environment for discussion, debate, and dissemination of information. Both research and educational programs increasingly use P2P technologies for exchange of information. Moreover, the adoption of legitimate P2P technologies and uses is expanding beyond higher education into the federal government and commercial sectors. NASA is using BitTorrent to distribute images and animations of the planet through its "Visible Earth" program; interestingly, it includes an answer in its Frequently Asked Questions to the following: "I thought P2P and Filesharing were illegal!" (<http://visibleearth.nasa.gov/faq.php>). The National Science Foundation is funding the Ockham digital library project, a P2P-based system linking digital libraries, and it is clear that P2P applications will play a growing role in the distributed digital libraries of the future. Warner Brothers announced last year its intention to use BitTorrent to distribute movies and television shows.

The rapid development of P2P applications supporting research and education will play an expanding role in this country's efforts to stay at the forefront of competitiveness and innovation, a goal for which there is strong bipartisan support in Congress.

The use of P2P technologies for legitimate purposes heightens the importance of being able to differentiate legitimate and illegitimate uses for any technologies intended to block or filter illegitimate P2P file sharing. However, given the current state of technology, it can be difficult if not impossible to differentiate legitimate from illegitimate uses of P2P technologies without invading the privacy of personal transactions by reading content. That is something most of our institutions understandably refuse to do as a matter of principle.

So where do we go from here? What are the projected activities to be undertaken by the higher education community? First, as noted above, we have formed a new university technology group which will work with the entertainment industry and commercial technology vendors to develop a methodology for improving the ability of campuses to control the unauthorized acquisition and distribution of copyrighted content. This methodology will encompass not only content from external sources but also from local area networks or LANs existing on campus. The results of this effort will be reported broadly to interested parties within the commercial technology sector as well as throughout the higher education community.

Second, we are working with RIAA to consider revisions to the student orientation video produced last year. The original video generated criticism both from within higher education and from without, principally based on perceived inaccuracies or omissions in the message conveyed with respect to copyright law. We have assembled a group of campus general counsels and chief information officers to review the video and the criticisms of it and consider modification that will address legitimate criticisms while maintaining a strong message to students. The goal of this exercise is to produce an effective instrument that will be widely adopted within the higher education community.

Third, we would like to conduct a survey of a broad selection of colleges and universities, covering all sectors, to identify what policies and practices are being used to address illegal file sharing and, in particular, to identify what procedures seem to be most effective in reducing illegal file sharing. Through this effort, we hope to identify an updated and refined set of best practices that can be widely shared within the higher education community.

Along with these activities, the national higher education associations will continue to raise the issue of illegal P2P file sharing with out member colleges and universities and share information through meetings and written communications.

Considerable progress has been made, both within higher education and within the new commercial sector of legitimate online digital delivery services. More work is needed. Our goal is to get as close to zero illegal transactions as possible, but we are dealing with changing human behavior; continually developing technologies and new challenges to them; new and adapting institutional policies and practices; and a nascent, evolving legitimate digital delivery service sector. These factors and forces are converging and moving in an encouraging direction, but they are complex components of the larger digital revolution; it will take resolve and shared purpose to work toward our goal. We intend to do precisely that.